

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**IN THE MATTER OF:**

**JACK EITZEN  
38175 VIA VISTA GRANDE  
MURRIETA, CALIFORNIA**

**App. ID No. 288214  
Place ID No. 755683**

**COMPLAINT NO. R9-2010-0084  
FOR  
ADMINISTRATIVE CIVIL LIABILITY**

**VIOLATIONS OF  
BASIN PLAN PROHIBITIONS 1 & 14  
AND  
ORDER NO. 99-08-DWQ**

**September 28, 2010**

**JACK EITZEN IS HEREBY GIVEN NOTICE THAT:**

1. Jack Eitzen (hereinafter Discharger) has violated Water Quality Control Plan, San Diego Basin (Basin Plan), Waste Discharge Prohibition Nos. 1 and 14, for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to Water Code section 13350(e)(1).
  - a. Waste Discharge Prohibition No. 1 states that the discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code section 13050, is prohibited.
  - b. Waste Discharge Prohibition No. 14 states that the discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
2. The Discharger has violated Discharge Prohibition A.2 and Special Provision for Construction Activity C.2 of Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity, for which the San Diego Water Board may impose civil liability pursuant to Water Code section 13385(c)(1).
  - a. Discharge Prohibition A.2 states that discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a municipal separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.2.

- b. Special Provision for Construction Activity C.2 states that all dischargers shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section a: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the best available technology/best conventional pollutant control technology (BAT/BCT) performance standard.
3. On December 21, 2005, the Discharger submitted a Notice of Intent (NOI) for coverage of construction activities conducted at 38175 Via Vista Grande, Murrieta, California, pursuant to the requirements of Order No. 99-08-DWQ.
4. The Discharger is the owner and general contractor of the property located at 38175 Via Vista Grande, Murrieta, California, APN 928-230-015.
5. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.

#### VIOLATIONS SUBJECT TO THIS COMPLAINT

6. Unauthorized Discharges of Waste to Waters of the State  
The Discharger violated Waste Discharge Prohibition Nos. 1 and 14 when he discharged waste including earthen materials into waters of the state during construction activities. The discharged material remains in state waters, therefore the violation continue. To date the days of violation are 645 (December 16, 2008 to September 21, 2010) and counting.
7. Discharges of Sediment to a Municipal Storm Sewer System (MS4) Tributary to Waters of the Nation  
The Discharger violated Prohibition A.2 of Order No. 99-08-DWQ when he allowed the discharge of sediment from the construction site to the County of Riverside MS4 without using the Best Available Technology to prevent the discharge. The discharges occurred on January 28, 2008 and December 15, 2008; therefore the days of violation are 2.
8. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan (SWPPP)  
The Discharger violated Special Provision For Construction Activity C.2 of Order No. 99-08-DWQ when he failed to have a SWPPP on site during construction activity and when he failed to implement adequate best management practices (BMPs) to reduce pollutants in storm water discharges. The violations occurred between October 19, 2007 and January 28, 2008 (102 days) and October 30, 2008 through December 16, 2008 (48 days); therefore the days of violation are 150.

**MAXIMUM AND MINIMUM CIVIL LIABILITY**

9. Pursuant to Water Code section 13350(e)(1), the maximum civil liability that the San Diego Water Board may impose for a violation of a Basin Plan prohibition is five thousand dollars (\$5,000) for each day the violation occurs or ten dollars (\$10) per gallon discharged, but not both.
10. Pursuant to Water Code section 13385(c)(1) and (2), the maximum civil liability that the San Diego Water Board may impose for a violation of an NPDES Permit is ten thousand dollars (\$10,000) for each day the violation occurs and/or ten dollars (\$10) per gallon discharged but not cleaned up that exceeds 1,000 gallons.
11. Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, at a minimum, at least ten percent more than the calculated Economic Benefit for each violation must be recovered. The maximum and minimum liabilities that may be imposed by the San Diego Water Board for the violations alleged in this Complaint are summarized in Table 1.

<b>Alleged Violation</b>	<b>Days of Violation</b>	<b>Minimum Civil Liability (based on Economic Benefit + 10%)</b>	<b>Maximum Civil Liability</b>	<b>Statutory Authority (Water Code Section)</b>
Discharges of Waste to Waters of the State	645	\$6,229	\$3,225,000	13350
Discharges of Sediment to an MS4 Tributary to Waters of the Nation	2	\$0	\$20,000	13385
Failure to Develop and Implement an Adequate SWPPP	150	\$49,500	\$1,500,000	13385
	<b>Total</b>	<b>\$55,729</b>	<b>\$4,745,000</b>	

**Table 1. Minimum and Maximum Liability**

**PROPOSED CIVIL LIABILITY**

15. The amount of discretionary assessment proposed is based upon consideration of factors described in Water Code sections 13327 and 13385(e) as applied to the violations and described further in the technical analysis.
16. Based on the penalty calculation methodology within Section VI of the Water Quality Enforcement Policy, civil liability should be imposed on the Discharger by the San Diego Water Board as detailed in Table 2 below.

Violation	Days of Violation	Adjusted Days of Violation	Liability Per Adjusted Days of Violation	Total Liability
Discharges of Waste to Waters of the State	644	48	\$3,487.50	\$167,400
Discharges of Sediment to an MS4 Tributary to Waters of the Nation	2	n/a	\$3,300	\$6,600
Failure to Develop and Implement an Adequate SWPPP	150	16	\$12,375	\$198,000
<b>PROPOSED CIVIL LIABILITY</b>				<b>\$372,000</b>
Staff Costs to Date				<b>\$9,450</b>
<b>TOTAL PROPOSED LIABILITY</b>				<b>\$381,450</b>
<b>Table 2. Total Proposed Liability</b>				

17. The Enforcement Policy also provides under "Other Factors as Justice May Require" that the cost of investigation and enforcement should be added to the liability amount. Over the course of trying to resolve this matter with the Discharger, the San Diego Water Board Prosecution Team invested 63 hours to investigate, prepare enforcement documents, and consider this action. The total investment of the San Diego Water Board to date is \$9,450. Adding staff costs of \$9,450 to the proposed liability of results in a total liability of **\$381,450**.

The proposed civil liability will permit the recovery of costs incurred by San Diego Water Board staff in investigating the claims and in pursuing this enforcement action.

Dated this 28th day of September 2010.



JAMES G. SMITH  
 Assistant Executive Officer

Signed pursuant to the authority delegated by the Executive Officer to the Assistant Executive Officer.